

***Coghlan v. Mayor & City Council of Baltimore: County Health Board
Nuisance Suit Buys Time for Baltimore City to Handle Garbage
Removal Crisis in 1921***

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Introduction/Abstract

An unexpected abandonment of contract by a privately-managed piggery responsible for the removal and disposal of kitchen refuse created a dire situation in Baltimore City in 1921. With the streets rapidly filling with rotting garbage, the City Council was forced to hastily establish an alternate plan for disposing of its waste. As a short term plan, the Council decided to enter into a contract with a farmer who owned several wharves on Bear Creek in Baltimore County. The agreement specified that William F. Huse, the wharf owner, would buy the garbage from the City, the City would haul it to his wharves using scows, and from there it would be spread on farm land in the surrounding area as fertilizer. While the Council was considering its options for a temporary solution, local newspapers were publishing articles describing the situation and the alternatives being proposed.

The articles in *The Sun* caught the attention of residents in Baltimore County who immediately reported concerns about the agreement between the City and Mr. Huse to the Baltimore County Board of Commissioners. Within days, the County Board members, under the leadership of then president William Coghlan, initiated a nuisance action against the City in an attempt to prevent the execution of the contract between the City and Mr. Huse.

The Baltimore County Circuit Court granted the injunction against the City almost immediately. However, encountering no attempts to enforce the ruling, and tons of rotting garbage accumulating in the streets, the City continued to haul the kitchen refuse to Mr. Huse's wharves on Bear Creek. In addition, the Deputy City Solicitor, on behalf of the Mayor and City Council, filed an appeal in the Maryland Court of Appeals to protest the injunction. The appellate court affirmed the lower court but remanded the case back to the trial court several months later, and Judge Frank I. Duncan of the Baltimore County Circuit Court again held in

favor of the County. By that time, though, the City had successfully initiated an alternative garbage disposal system in Anne Arundel County, and had ceased selling garbage to the Baltimore County farmer.

Coghlan v. Mayor & City Council of Baltimore gave rise to several notable legal themes and ramifications. It was the first Maryland case to hold that a local administrative board could sue another government without violating sovereign immunity principles. The case also showed that a local government can be sued in another jurisdiction when it is alleged that the government caused a public nuisance in that other jurisdiction. Finally, the case demonstrated that in order to establish a nuisance in Maryland the evidence must be more than merely speculative or threatened. Since 1921, these themes have arisen in other cases presented before the Maryland courts and in several treatises.

Despite demonstrating that Baltimore City officials legally will be held accountable for the decisions that they make, even in emergency situations, this case arguably demonstrated the exact opposite. While the parties were waiting for the appellate hearing, for instance, the City continued performance of their contract with William F. Huse and delivered the City's garbage to his wharves in scow loads. By the time Judge Duncan wrote his opinion after the remand trial, the City was almost prepared to haul all of the garbage to Graveyard Point in Anne Arundel County. Acknowledging this alternate method, Judge Duncan upheld the injunction but granted an extension of its start date, and said that it would not go into effect for another month. This effectively allowed the City to become fully prepared before it was forced to cease performance on its contract with Mr. Huse.

The *Coghlan* case demonstrated that legal remedies such as injunctions can be much more effective in theory than in practice. While the County Commissioners won the legal battle

and were granted an injunction against the City, in practice the injunction did little more than to ensure that the City would not continue the process too long. It is possible, however, that the City would have heeded the injunction when it was first issued had the garbage situation not presented such a large predicament. Overall, in this nuisance case that pitted the City's residents with an ever-growing garbage problem against the residents of Baltimore County with concerns about garbage being spread as fertilizer, the City came out on top despite losing the legal battles.

This Essay will first discuss the historical context of the case and the City's methods for handling garbage removal before 1921. It will then describe aspects of *Coghlan v. Mayor & City Council of Baltimore* in detail, including the lower and appellate court arguments, the court holdings, the parties involved, and the ultimate outcome of the case. Finally, this Essay will argue that despite the County Commissioners' legal victory, the City ultimately used the court system to its advantage in a better way and bought itself enough time to resolve its garbage removal problems.

I. The Case

A. Historical Context

By 1921 Baltimore City had employed many techniques for removing its garbage¹ from the City. From 1898 to 1907, for example, all of the garbage from the City was taken to wharves along Bear Creek in Baltimore County and sold to farmers as fertilizer.² In 1913, most people in Maryland burned their kitchen refuse or fed it to pigs.³ Only one person out of every twenty had a regular garbage service.⁴ In the early part of the twentieth century Baltimore City began to take garbage to a rendering plant in Anne Arundel County.⁵ The rendering plant boiled the garbage into grease and fertilizer, but it was a costly process.⁶ The plant was run by the Southern Product Company for many years, but Baltimore City Mayor James Henry Preston wanted to find another method for disposing of the City's garbage.⁷ It was rumored that the Mayor wanted to even a political score with his rival Frank A. Furst, a prominent businessman, who he suspected was financially interested in purchasing the Southern Product Company.⁸

One of the methods that the Mayor and the then-Water Engineer Walter E. Lee investigated involved using pigs to dispose of garbage.⁹ This method was already being utilized

¹ For the purposes of this Paper, the term "garbage" will be used to refer to "the refuse from the kitchens of Baltimore City [consisting] of animal and vegetable matter in various stages of decay and putrefication." *Mayor & City Council of Baltimore v. Bd. of Health for Baltimore Co.*, 139 Md. 210, 212 (1921). This type of garbage is distinguishable from things like beer bottles, newspapers, and human waste, which were disposed of separately. Brennen Jensen, *Charmed Life*, BALT. CITY PAPER, Jan. 5, 2000, available at <http://www.citypaper.com/news/printready.asp?id=2502>.

² Baltimore City Archives, City Solicitor's Files, Number 15283, MSA T696-254, 0/35/10/34, Notes of Allen A. Davis, at 129 [hereinafter City Solicitor's Files].

³ ROBERT J. BRUGGER, *MARYLAND: A MIDDLE TEMPERAMENT*, 1634 – 1980, at 445 (1988).

⁴ *Id.*

⁵ Jensen, *supra* note 1.

⁶ *Id.*

⁷ *Piggery Closes Down, No Warning Given*, BALT. SUN, Jan. 15, 1921, at 7.

⁸ *County to Sue to Block City Garbage Plans*, BALT. SUN, Jan. 16, 1921, at 26 and Pt. 3 p. 9. Mr. Furst was born in Germany in December of 1845, but moved to the United States when he was young and served in the Civil War until he was 21, when he returned to Baltimore. *THE BOOK OF MARYLAND: MEN AND INSTITUTIONS* 30 (Felix Agnus, et al., eds. 1920). He began working for elevator repair businesses, and eventually became the President of the Maryland Dredging and Contracting Company. *Id.*

⁹ *Piggery Closes Down, supra* note 7, at 7.

by city governments on the West Coast and in the Midwest.¹⁰ A small committee from Baltimore’s Council determined that initiating a piggery system in the City would require 15,000 hogs, or about one pig per forty-six people.¹¹ Despite the large numbers, this plan appealed to the committee and in 1919 Baltimore City entered into a contract with American Feeding Company, a Minnesota-based company that used pigs to dispose of garbage.¹² American Feeding Company agreed to pay the City for the garbage at a price dependent upon the price of pork in the Chicago stockyards.¹³ The City expected to net about \$16,500 a year from this arrangement, which included rent money as well as money in exchange for the garbage.¹⁴

To start the piggery project, Baltimore City bought a 156-acre farm near the mouth of the Patapsco River in Anne Arundel County for \$26,000 and built a wharf there for an additional \$35,000.¹⁵ The procedure for distributing the garbage consisted of the garbage being hauled to the wharf in scows, a locomotive crane loading the garbage onto narrow rail cars, and the cars driving along a track distributing the garbage among 70 pig-packed feeding lots.¹⁶



Left: Mapquest map showing Baltimore City, Graveyard Point (Southeastern circle), and Bear Creek (Northeastern circle); Right: Aerial photo of Graveyard Point near Bodkin Creek in Anne Arundel County (<http://teraserver.micrrosoft.com>)

¹⁰ *Id.* The cities of Albany, New York and Denver, Colorado were already trying the piggery method of disposing of garbage, but those cities were significantly smaller than Baltimore in 1919. Jensen, *supra* note 1.

¹¹ Jensen, *supra* note 1.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Piggery Closes Down*, *supra* note 7, at 16.

¹⁶ *Id.* For a picture of a locomotive crane, visit <http://www.dir.ca.gov/Images/t8img/4885-32.gif>.

The City's use of 15,000 pigs to dispose of its garbage was not without problems. The pigs frequently got sick from the refuse, and many refused to eat it altogether.¹⁷ During the winter, frozen waters often prevented the scows from making the trip all the way down to Bodkin Creek,¹⁸ and, the most obvious problem of course was that the operation smelled horribly.¹⁹ The American Feeding Company had received several complaints from the community during its operation in Maryland, including concerns about odors, flies, and dead pigs.²⁰ The company had become involved in a lawsuit brought in Anne Arundel County at one point, and a medical investigation had been conducted by experts to assess health dangers of the operation.²¹ Another problem with the establishment of the piggery system was that the City leaders never designed a backup plan in the event that the piggery shut down.²² Moreover, Mayor Broening had actually declined an offer to access the old reduction plant managed by the Southern Product Company in the event of an emergency, and had proceeded to sell all of the old equipment, initially valued at \$100,000, to a junk dealer for about \$6,000.²³

On January 14, 1921, Walter M. Cooper, the General Manager of the Maryland Feeding Company, informed the Baltimore City Board of Estimates via a telephone message that the company had "sold all of its pigs, suspended operations, abandoned the contract and discharged its employees."²⁴ Mr. Cooper refused to give an explanation for the closing of the operation until everything had been settled between the Maryland Feeding Company and Baltimore City.²⁵ He stated that letters had been mailed to the City Solicitor, Roland R. Marchant, but the City

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Piggery Closes Down*, *supra* note 7, at 7.

²¹ *Id.* The results of the medical examination were not mentioned in the *Sun* article.

²² *County to Sue*, *supra* note 8, at Pt. 3 p. 9.

²³ *Id.*

²⁴ *Piggery Closes Down*, *supra* note 7, at 16.

²⁵ *Id.*

Solicitor had been out of the office for several days due to illness.²⁶ The Board of Estimates at the time included Acting Mayor Howard Bryant, Comptroller Peter Tome, Highways Engineer Christhilf, Deputy City Solicitor Allen A. Davis, and Commissioner of Street Cleaning Schuch.²⁷ The Board responded to the phone message by boarding the city tug boat “Baltimore” and riding down to the piggery farm at Graveyard Point.²⁸ When they arrived at the site, the only thing that they found were sea gulls feeding on a scow of garbage that had just arrived, and several other scow loads that had been left to rot.²⁹ There were no pigs or employees to be found.³⁰

On January 15, 1921, Acting Mayor Bryant issued a statement declaring that the

“[f]ailure of the piggery at Graveyard Point to further function has placed a very grave and serious proposition before the city administration. Temporarily, with the aid of the winter weather, we can handle the proposition, but to settle the question of final and proper disposition of the city garbage will require proper [investigation.] The last administration had the problem before it, and after much determination and investigation the defunct piggery was the result. Now other plans must be started at once to have them formulated before the hot weather is upon us. The question is vital, as not only the health of the city is at stake, but a big financial proposition is involved which calls for immediate action.”³¹

Later that day, Walter Cooper met with Acting Mayor Howard Bryant and blamed the City for the company going out of business.³² He argued that the City failed to deliver garbage in the right quantity and of the right quality, and also was late in its deliveries.³³ Mr. Bryant listened to Mr. Cooper’s statements and then promptly concluded the meeting without responding to Mr.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Jensen, *supra* note 1.

³⁰ *Id.*

³¹ *County to Sue*, *supra* note 8, at Pt. 3 p. 9. *The Sun* paper also noted that the City was very lucky that the piggery had abandoned the contract in mid-winter rather than mid-summer. Jensen, *supra* note 1.

³² *County to Sue*, *supra* note 8, at 26. The current mayor, Mayor Broening, was traveling in the South with the National Council of Moose during this situation, looking for a home for the elderly. *Id.* On January 15, when Mr. Bryant met with Mr. Cooper, Mayor Broening was in Miami, Florida. *Id.*

³³ *Id.*

Cooper's allegations.³⁴ Comptroller Tome in an interview with *The Sun*, however, stated that the City had not received any money from the piggery for the City's garbage in almost a year, and that the company was also late in its rent payments to the City.³⁵ On that same day Frank Driscoll, Assistant City Solicitor, went to Severna Park in Anne Arundel County and entered a request for a writ of distraint against the Maryland Feeding Company for rent due on the farm.³⁶ Financially, the piggery and the wharf at Graveyard Point represented an investment on the part of the City totaling \$96,000, including materials and labor.³⁷ City Comptroller Peter Tome stated that the piggery owed a total amount of \$20,663.51 to the City.³⁸ The distraint would prevent the Maryland Feeding Company from moving or selling any of the equipment at the farm until the payment disputes had been resolved.³⁹

In addition to being a financial misfortune for the City, the abandonment of the piggery project forced Baltimore officials to find an alternative system for disposing of its garbage under pressure. There were reports on January 15, 1921 that the City had entered into a contract with William Huse, a resident of Baltimore City that owned wharves in Baltimore County along Bear Creek.⁴⁰ That same day Dr. John Harrison, a County Commissioner for Baltimore County, announced that the Commissioners would sue for a writ of injunction to prevent the City from selling its garbage to farmers in Baltimore County.⁴¹ One reason why Baltimore County residents were so quick to protest was that the County authorities had recently had the Bear

³⁴ *Id.*

³⁵ *Piggery Closes Down*, *supra* note 7, at 7. At that time, the price of hogs had recently dropped in the Chicago market, but up until then the piggery was said to have been making a profit. *Id.*

³⁶ *County to Sue*, *supra* note 8, at Pt. 3 p. 9.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *See, e.g., id.* at 26.

⁴¹ *Id.*

Creek section cleaned of city garbage that was sold and spread there during the summer of 1920, when the piggery had temporarily refused to accept city garbage.⁴²

Following these announcements, health officials began issuing conflicting statements regarding the potential risk of spreading garbage on land for fertilizer. Dr. Josiah S. Bowen, health officer for the Bear Creek area, stated: “That Baltimore city garbage should be dumped there for one day, much less for three months, is one of the most serious situations that has ever confronted Baltimore county. I have already strongly protested to the County Commissioners of Baltimore county and to the Health Commissioner of Baltimore city.”⁴³ In contrast, State Health Commissioner C. Hampson Jones told Acting Mayor Bryant that spreading garbage as fertilizer would not pose a health threat during the winter.⁴⁴

Throughout all of these events City Solicitor Roland R. Marchant was confined to his bed due to a severe cold.⁴⁵ Nevertheless, he worked out a proposal for a new garbage collection system that he intended to present to Mayor Broening when the Mayor returned from his visit to the South.⁴⁶ Mr. Marchant had begun working on the plan months before, during the fall of 1920, when he met with an expert from Harrisburg, Pennsylvania and showed him the piggery operation at Graveyard Point.⁴⁷ The results of that visit were never presented to the Board of Estimates.⁴⁸ Mr. Marchant presented his plan to a newspaper editor from his bed on January 16, 1921.⁴⁹ He expressed to the interviewer his desire to build a reduction plant, or an incinerating

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Marchant Wants City to Have Garbage Plant*, BALT. SUN, Jan. 17, 1921, at 16. At that point, Mr. Marchant’s cold had developed into pneumonia. *Id.*

plant, for eliminating city garbage.⁵⁰ Revamping the old reduction plant, however, he said was absolutely out of the question.⁵¹

By January 17, 1921, the garbage of Baltimore City had been accumulating for days in the streets in front of peoples' houses.⁵² Two scows were taking garbage to Graveyard Point and unloading it in low areas that had already been plowed, but this operation moved at a very slow pace.⁵³ Mr. Huse at that time told reporters that he had not yet entered into a contract with the City regarding garbage removal.⁵⁴ Soon after that statement, however, a contract was executed between Mr. Huse and the City and the County officials responded promptly by filing a lawsuit seeking an injunction.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* Garbage from the eastern and northeastern sections of the City was being loaded on the scow at Back Basin, and all garbage from western parts of the City was going to the scow at Ridgley Street according to Street Cleaning Commissioner Schuch. *Id.*

⁵⁴ *Id.*

B. Baltimore County Circuit Court

1. The Parties

The Baltimore County Board of Commissioners, acting ex officio as the Board of Health for Baltimore County, filed a bill of complaint against Baltimore City in the Baltimore County Circuit Court on January 18, 1921.⁵⁵ The Board of County Commissioners at that time consisted of five men, led by President William F. Coghlan.⁵⁶

The other County Commissioners named as plaintiffs included William P. Bosley, Robert C. Clarke, Harrison Rider, and John W. Harrison.⁵⁷ Of those four, Robert C. Clarke was the member with the most experience as a County Commissioner, having been on the Board for about sixteen years before becoming the President in 1934.⁵⁸ He retired from the Board in 1938 and was appointed by the governor as the State Industrial Accident Commissioner, earning a salary of \$6,000 per year.⁵⁹

Harrison Rider was also well-known in Maryland politics. Raised on a farm in Baltimore County, Mr. Rider's first political position was as the Register of Wills for Baltimore County.⁶⁰ Mr. Rider was president of, and associated with, the Second National Bank in Towson, Maryland for over fifteen years.⁶¹ In 1919, he was elected as a County Commissioner for Baltimore County.⁶²

⁵⁵ City Solicitor's Files, *supra* note 2, Bill of Complaint, at 227-28.

⁵⁶ *Id.* Mr. Coghlan was forty-nine years old at the time of the lawsuit, and had served as a member of the Maryland House of Delegates from 1908-1912. House of Delegates, Baltimore County (1790-1966), Archives of Maryland, available at <http://www.mdarchives.state.md.us/msa/speccol/sc2600/sc2685/house/html/bahouse.html>.

⁵⁷ Baltimore City Archives, Baltimore County Circuit Court (Equity Docket) Vol. WPC 24 pp. 124 and 265, MSA C326-24, 2/49/8/23, at 124 [hereinafter Equity Docket].

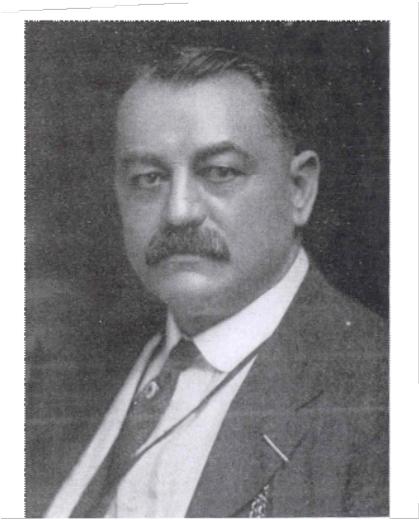
⁵⁸ SUN, May 9, 1945, as presented in Biographical Card File in Maryland Department of the EPFL, under Clarke, Robert. A lifelong democrat, Mr. Clarke served as a police magistrate in Baltimore County before becoming a Commissioner. *Id.*

⁵⁹ *Id.* Mr. Clarke died seven years later. *Id.*

⁶⁰ THE BOOK OF MARYLAND, *supra* note 8, at 187. He was elected to the position for one term in 1899. *Id.*

⁶¹ *Id.*

⁶² *Id.* Outside of the political arena, Mr. Rider was a member of the Masonic Order and the B.P.O. Elks. *Id.*



Harrison Rider

Source: Book of Maryland Men and Institutions p. 126

John W. Harrison, the fifth County Commissioner to comprise the Board of Health for Baltimore County, was the only doctor on the Board. Born in 1869, Dr. Harrison graduated from the University of Maryland School of Medicine and worked as a doctor until January 25, 1928 when he died of apoplexy.

The legal counsel for the Baltimore County Board of Commissioners was Edward H. Burke.⁶³ Mr. Burke was born on January 14, 1886, and attended Calvert Hall College in Towson, Maryland.⁶⁴



Edward Hamilton Burke

Source: Distinguished Men of Baltimore and Maryland p. 86

⁶³ City Solicitor's Files, *supra* note 2, Bill of Complaint, at 227-28.

⁶⁴ DISTINGUISHED MEN OF BALTIMORE & MARYLAND 86 (Baltimore Amer. Pub. 1914).

From there he went on to earn his Bachelor's Degree from Loyola College in 1906, and his L.L. B. from the University of Maryland in 1908.⁶⁵ After several years of maintaining a Towson law practice, Mr. Burke enlisted in the U.S. Marine Corps in 1918 and served during World War I.⁶⁶ When he returned to the United States in 1920, he relocated to Baltimore City and became a partner with his father, who was a judge for the Maryland Court of Appeals.⁶⁷ In 1952 he became the chairman of a committee to study the state judiciary, and during the following year he chaired the commission that drafted a new charter document for Baltimore County.⁶⁸ Mr. Burke suffered a heart attack during a church service at the Church of the Sacred Heart and died in 1955.⁶⁹ On the day after he died there were impromptu services held in the Baltimore County Circuit Courthouse, and several members of the Bar spoke about how highly regarded he had been as an active political leader.⁷⁰

The Defendants involved in the *Coghlan* case were also a well known group of individuals. Mr. Howard Bryant was performing mayoral duties for the City while Mayor Broening was on a trip to the South.⁷¹ He graduated from West Nottingham Academy in 1874,⁷² and Princeton University in 1882.⁷³ In 1890 he founded the Baltimore Law School, which was

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ JAMES F. SCHNEIDER, A CENTURY OF STRIVING FOR JUSTICE 137 (1996). That same year Edward Burke was elected to the Maryland House of Delegates, representing the Democratic Party. *Id.*

⁶⁸ *Id.* During that same period, 1952-1953, Mr. Burke was the President of the Maryland State Bar Association. *Id.* Other organizations that he participated in included the New Democratic Organization, Phi Kappa Sigma Fraternity, Knights of Columbus, and the Sons of the American Revolution. DISTINGUISHED MEN OF BALTIMORE & MARYLAND, *supra* note 64, at 86.

⁶⁹ "E.H. Burke, Attorney, Is Dead at 69." BALT. SUN, July 11, 1955, available at

<http://www.mdarchives.state.md.us/msa/speccol/sc3500/sc3520/001600/001663/html/msa01663.html>.

⁷⁰ MARYLAND STATE BAR ASS'N REPORT OF THE SIXTY-FIRST ANNUAL MEETING, 19 (1956). Chief Judge Gontrum stated that Ned Burke "was a master at the trial table...He was a credit to the Bar of Baltimore County, of Maryland and of the United States. He was the soul of honor and was respected and trusted by every judge in the State." *Id.*

⁷¹ See *supra* note 32 and accompanying text.

⁷² MATTHEW PAGE ANDREWS, TERCENTENARY HISTORY OF MARYLAND 634-45 (1925).

⁷³ THE BOOK OF MARYLAND, *supra* note 8, at 198. In 1887 he married Miss Alice Harris and returned to Baltimore. *Id.*

later taken over by the University of Maryland.⁷⁴ In 1916 he was elected to the Maryland House of Delegates from Baltimore County, three years later he became President of the Second Branch of the Baltimore City Council, and in 1923 he was the President of City Council.⁷⁵



Howard Bryant

Source: Book of Maryland Men and Institutions, p. 198

The members of City Council that played a large role in the *Coghlan* case consisted primarily of the members of the City's Board of Estimates. August E. Christhilf, the Highways Engineer for Baltimore City, was a member of the Board at the time this lawsuit was brought against the City. Born on October 28, 1872, Mr. Christhilf attended Baltimore City College and studied Civil Engineering.⁷⁶ From 1906 to 1911, Mr. Christhilf was the chief engineer for the Commission for Opening Streets.⁷⁷ He was appointed Highways Engineer of Baltimore City on April 12, 1920.⁷⁸

⁷⁴ ANDREWS, *supra* note 72, at 634-45. He was a lecturer and teacher at the University of Maryland Law School for thirty-three years. *Id.*

⁷⁵ *Id.* Outside of his job, he enjoyed golfing at the Baltimore Country Club, and was also a member of the Maryland Country Club. *Id.*

⁷⁶ THE BOOK OF MARYLAND, *supra* note 8, at 202. He was a civil engineer for eighteen years, and was also involved in a contract business for four years. *Id.*

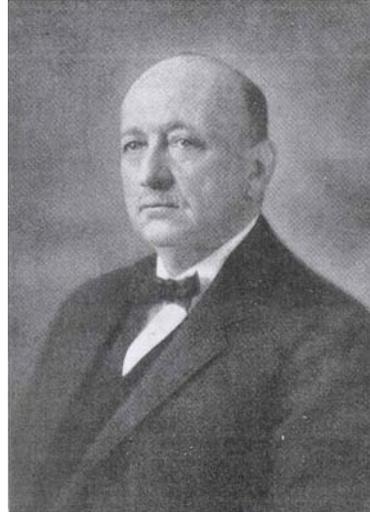
⁷⁷ *Id.*

⁷⁸ *Id.* Outside of his career, he was a member of the Press Club of Baltimore and the American Society of Civil Engineers. *Id.* He was married to Mary A. Marsilliott, of Pittsburgh, in December of 1900. *Id.*



August E. Christhilf

Source: Book of Maryland Men & Inst., p. 202



Peter E. Tome

Source: Tercentenary History of Md., v. 2, p. 96

Peter E. Tome, the Comptroller for Baltimore City, was also a member of the Board of Estimates at the time that the lawsuit was brought, and was very involved in the financial calculations addressed in this suit.⁷⁹ Mr. Tome was the Director of the Third National Bank and the National Bank of Baltimore for twenty-five years, beginning in 1898.⁸⁰ In 1910 Mr. Tome was elected to be the City's Comptroller for a four year term.⁸¹ He put forth considerable effort in creating housing around Lexington Market in particular, and those efforts became the foundation for his campaign for reelection in 1923.⁸²

Adolph P. Schuch, the Commissioner of Street Cleaning for Baltimore City was also a member of the Board of Estimates in 1921. In fact, Mr. Schuch was reportedly the member of the Board that suggested that the City enter into a contract with the other defendant, William F.

⁷⁹ ANDREWS, *supra* note 72, at 96. Mr. Tome was born on October 24, 1858 in York Pennsylvania as the fourth of eight children. *Id.* He attended Lafayette College until 1883, and then received his L.L.B. from the University of Maryland in 1885. *Id.* at 99.

⁸⁰ *Id.* He married Mary Pearl Etheridge in 1893 and served as a police commissioner for Baltimore City from May 1908 to May 1912. *Id.*

⁸¹ *Id.* A large aspect of his responsibilities as Comptroller involved the oversight of Baltimore public markets, and housing around those markets. *Id.*

⁸² *Id.*

Huse, in order to remove the garbage from the City.⁸³ According to the Bill of Complaint, Defendant William Huse was not a resident of Baltimore County despite the fact that he owned land there.⁸⁴

The City Law Department was assigned to represent the Mayor and City Council of Baltimore during this trial. At that time, Roland R. Marchant was the City Solicitor.⁸⁵ Mr. Marchant served as the City Solicitor until October 1923, when he entered the private practice of Marchant & Kraus, and worked in the Munsey Building in downtown Baltimore.⁸⁶ He was a member of the Republican Party, the Knights Templars, and the Baltimore Country Club.⁸⁷



Roland R. Marchant
Source: Book of Maryland Men & Institutions, p. 160

Although Mr. Marchant was the head of the City Law Department at the time of the filing of this lawsuit, it was Deputy City Solicitor Allen A. Davis that took on most of the

⁸³ *County to Sue*, *supra* note 8, at 26.

⁸⁴ Baltimore County Circuit Court (Equity Papers) Coghlan v. Mayor and City Council, filed 18 January 1921, Box 918 File No. 15283, MSA T696-254, 0/35/10/34, at 2-10, Bill of Complaint [hereinafter Equity Papers]. Mr. Huse at the time resided at 2800 Montebello Avenue in Baltimore City. *Id.* at 9.

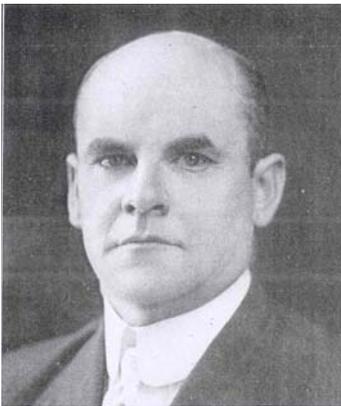
⁸⁵ Mr. Marchant was born in Matthews County, Virginia, and attended private and public schools in the area while he lived there. THE BOOK OF MARYLAND, *supra* note 8, at 160. He graduated from the University of Maryland in 1902 with an L.L. B. degree. *Id.* Several years after serving for the military during the Spanish-American War, Mr. Marchant became an Assistant States Attorney for Maryland. *Id.* Within six months, he was promoted to Deputy States Attorney. *Id.* He resigned from the position after five years on May 17, 1919, and five months later he was named the City Solicitor of Baltimore City. *Id.*

⁸⁶ ANDREWS, *supra* note 72, at 663-64.

⁸⁷ *Id.*

responsibilities associated with the case. Allen A. Davis came to Baltimore in 1910, and was appointed to the City Law Department in 1919.⁸⁸ He served there for thirty-five years, and tried to achieve a judgeship in 1926 but was unsuccessful.⁸⁹

The third individual from the City Law Department that provided representation for the City and was mentioned in several court documents was Frank Driscoll, an Assistant City Solicitor. Mr. Driscoll was born in Baltimore on August 14, 1870.⁹⁰ He attended the Baltimore University School of Law and graduated in 1897.⁹¹ In 1904 Mr. Driscoll was appointed as a civil magistrate,⁹² and worked as a justice of the peace before becoming an Assistant City Solicitor in 1911.⁹³



Frank Driscoll

Source: Distinguished Men of Baltimore and Maryland, p. 114

⁸⁸ EVENING SUN, April 2, 1954, as archived in Biographical Card File in Maryland Department of the EPFL, under Davis, Allen.

⁸⁹ *Id.* Mr. Davis was also known for launching the Maryland Harness Horse Association, but there is little or no record of such an organization today. *See id.*

⁹⁰ DISTINGUISHED MEN OF BALTIMORE & MARYLAND, *supra* note 64, at 114.

⁹¹ *Id.*

⁹² ANDREWS, *supra* note 72, at 933.

⁹³ DISTINGUISHED MEN OF BALTIMORE & MARYLAND, *supra* note 64, at 114. A Catholic and member of the Democratic Party, he was involved in a variety of organizations, including the Ariel Rowing Club, Baltimore Athletic Club, Knights of Columbus, Royal Arcanum, and the Eagles. ANDREWS, *supra* note 72, at 933; DISTINGUISHED MEN OF BALTIMORE & MARYLAND, *supra* note 64, at 114.

2. *The Bill of Complaint*

The Plaintiffs filed a Bill of Complaint with an Order for Injunction in the Circuit Court for Baltimore County on January 18, 1921.⁹⁴ Exhibits A and B were filed with the Complaint on the same day.⁹⁵ The facts alleged were that the City had previously disposed of its garbage at an Anne Arundel County property located on the water, but when that particular operation closed down the City illegally contracted with a farmer to dispose of the garbage by spreading it on territory bordering Bear Creek.⁹⁶ The Plaintiffs stated that the contract between the City and Mr. Huse was for a period of ninety days, and that the City could terminate the contract at any time by giving fifteen days notice to Mr. Huse.⁹⁷ The Complaint contained two main arguments. First, the County Commissioners argued that spreading garbage in such large quantities over the soil of farms in the Bear Creek area would produce disease and pestilence and generally be a menace to the residents of the surrounding areas.⁹⁸ The Plaintiffs were particularly concerned about the area becoming a breeding place for billions of flies and disease-carrying insects.⁹⁹ They noted that the City at that time produced an average of 128 tons of garbage per day, and that Mr. Huse had no means or machinery equipped to reduce the garbage for sanitary disposal.¹⁰⁰ In the Complaint the Plaintiffs also alleged that Baltimore City's contract with Mr. Huse was an effort to find the cheapest method of garbage disposal possible, and that the City had failed to consider that the Bear Creek area was much more populated than the properties surrounding the abandoned piggery operation in Graveyard Point.¹⁰¹ All of these concerns were

⁹⁴ Equity Docket, *supra* note 57, at 124.

⁹⁵ *Id.*

⁹⁶ Equity Papers, *supra* note 84, Bill of Complaint, at 2-10.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* In Mr. Burke's notes, he had written that Dundalk at the time was an unincorporated village nearby with about 300 homes, Sparrows Point, another nearby community, had a population of about 10,000, there were small

alleged in support of a threatened and prospective nuisance claim.¹⁰² In order to establish nuisance the Plaintiff's attorney Mr. Burke noted that the legal standard in such cases,

“as stated by the authorities, is whether the nuisance complained of will or does produce such a condition of things as in the judgment of reasonable men is naturally productive of actual physical discomfort to persons of ordinary sensibilities and of ordinary tastes and habits and as in view of the circumstances of the case is unreasonable and in derogation of the rights of the party.”¹⁰³

The second main argument put forth by the Plaintiffs in the Bill of Complaint was that the contract between William Huse and Baltimore City was illegal because it involved disposing of garbage within nine miles of the Lazaretto Lighthouse, and because the contract had not been approved by the Maryland State Board of Health.¹⁰⁴ This action was illegal, they argued, under Chapter 205 of the Acts of 1908, which according to the Plaintiffs prohibited the disposal of garbage anywhere within three miles of the lighthouse, and Mr. Huse's wharves were located within that prohibited distance.¹⁰⁵

The Plaintiffs' attorney Mr. Burke filed two exhibits along with the Complaint on January 18th, 1921.¹⁰⁶ Exhibit A was titled, “Resolution of the County Commissioners of Baltimore County, sitting as the Board of Health for Baltimore County,” in which the Board resolved to initiate legal action against Baltimore City to enjoin performance of the contract between the City and Mr. Huse.¹⁰⁷ The second exhibit, Exhibit B, was a letter from the State Department of Health, dated January 17, 1921, stating that execution of the contract would

and large truck farms surrounding Mr. Huse's wharves, and there were also modern highways providing an easy travel route for visitors to the Bear Creek resort in the warmer months. City Solicitor's Files, *supra* note 2, Mr. Burke's Notes.

¹⁰² Equity Papers, *supra* note 84, Bill of Complaint, at 2-10.

¹⁰³ *Id.*

¹⁰⁴ *Id.* The latter argument was not very prominent in the Complaint, but Mr. Burke's notes indicated that he believed the City had violated Article 43 of the Code, Volume 3, §§269 and 276 by disposing of garbage without first obtaining permission from the State Board of Health. City Solicitor's Files, *supra* note 2, Mr. Burke's Notes.

¹⁰⁵ Equity Papers, *supra* note 84, Bill of Complaint, at 2-10.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

create a nuisance and be dangerous to the health of the population of about 13,000 in the surrounding areas.¹⁰⁸ The State Health Board advised an injunction because sanitary disposal the garbage required it to be plowed under at an impossible rate of one load per five minutes.¹⁰⁹ Without this process, the Health Board stated that the garbage would emit noxious odors and have an undeterminable fly-breeding capacity.¹¹⁰

Eight days later, Mr. Davis, Deputy City Solicitor, received a letter from the co-defendant, Mr. William Huse, asking several questions about the legal standards and procedural requirements of the lawsuit.¹¹¹ He was interested in finding out what laws applied to the garbage removal situation, whether witnesses from the community would be necessary, whether the spreading of garbage had ever been the recorded cause of an epidemic, and whether there was any reason to believe that the spreading of the garbage as fertilizer might cause sickness to people in the surrounding area.¹¹² Two days later, William F. Huse and the Mayor and City Council of Baltimore filed Demurrers in the Baltimore County Circuit Court.¹¹³ The Complaint was slightly amended and re-filed on February 3, 1921, and the Demurrers were also re-filed.¹¹⁴

The Demurrers of the Defendants were identical; both provided the same three grounds for dismissing the lawsuit.¹¹⁵ The Defendants first argued that the Baltimore County Circuit Court did not have jurisdiction to entertain the lawsuit because the Defendants were not residents of Baltimore County, and the lawsuit was transitory.¹¹⁶ Second, the Defendants argued that the Complaint did not indicate the grounds upon which the Plaintiffs were entitled to bring the

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ City Solicitor's Files, *supra* note 2, Memorandum to Allen A. Davis from William F. Huse, at 232.

¹¹² *Id.*

¹¹³ Equity Docket, *supra* note 57, at 265, 124.

¹¹⁴ *Id.* at 265.

¹¹⁵ Equity Papers, *supra* note 84, Demurrers.

¹¹⁶ *Id.*

action.¹¹⁷ Finally, the Defendants stated in the Demurrers that the Complaint contained an insufficient allegation of actual wrong committed, and that the Plaintiffs failed to prove that irreparable damage was being done to them.¹¹⁸ This argument was supported in Mr. Burke's notes with statements written by the Maryland Court of Appeals in two different cases, *Sackett v. Mayor & County Council of Baltimore*¹¹⁹ and *Adams v. Michael*.¹²⁰ In *Sackett*, the court had concluded that "[t]he mere allegation in a bill that irreparable damages will ensue is not sufficient unless facts be stated which will satisfy the court the apprehension is well founded...."¹²¹ Similarly, in *Adams* the court stated that to state a case for nuisance the injury must be shown to "seriously interfere with the ordinary comfort and enjoyment" of the property of the plaintiff, that it must be a real injury, one which a court of law would award substantial damages.¹²²



Baltimore County Courthouse 1920
Photo from <http://www.mdkidspage.org>

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ 135 Md. 56 (1919).

¹²⁰ 38 Md. 123 (1873).

¹²¹ *Sackett*, 135 Md. at 64.

¹²² *Adams*, 38 Md. at 126.

3. Judge Frank Duncan's Decision

Coghlan v. Mayor & City Council of Baltimore was first heard by Judge Frank Duncan, Associate Judge of the Baltimore County Circuit Court. Judge Duncan was born on June 4, 1858 in Baltimore County.¹²³ He attended the University of Maryland School of Law and graduated with a law degree in 1884.¹²⁴ One year later, acting on his passion for journalism, he bought the *Baltimore County Herald*, renamed it the *Baltimore County Democrat*, and edited the newspaper for the next twenty years.¹²⁵ In 1888 Judge Duncan was elected to the General Assembly of Maryland, and the next year he was appointed States Attorney for Baltimore County.¹²⁶ In 1905 he was appointed Associate Judge of the Third Judicial Circuit, and he stayed in that position for two fifteen year terms.¹²⁷



Judge Frank I. Duncan
(third row, third from left)

¹²³ SCHNEIDER, *supra* note 67, at 137. He worked at his father's general store and then sold candy throughout the South from a horse and buggy until he married Clara Eaverson on Valentine's Day in 1882 and decided to go into law. *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* He lost the re-election in 1895 by less than 100 votes. *Id.*

¹²⁷ MARYLAND STATE BAR ASS'N REPORT OF THE FIFTY-FIRST ANNUAL MEETING 152 (1946). Judge Duncan was very active in fraternal organizations and "had a keen sense of humor, a master of wit and repartee, a delightful story teller, and was in great demand as a public speaker, serving as toastmaster on many occasions in different organizations." *Id.* at 153-54.

Judge Duncan was very interested in crime prevention mechanisms, and sponsored a bill before the Maryland Legislature in 1914 providing for a Juvenile Court in Baltimore County.¹²⁸ The legislation was passed and he presided over that court for twenty-two years until his retirement.¹²⁹ Judge Duncan was also remembered for being the oldest president of the Maryland State Bar Association – he was eighty years old when he accepted the office in 1938.¹³⁰

Given his close ties to Baltimore County, Judge Duncan's first decision in the *Coghlan* case on February 25, 1921 was not surprising. He overruled the demurrers with leave to the Defendants to answer within fifteen days.¹³¹ Furthermore, he issued a writ of injunction against Baltimore City, preventing the City from hauling its garbage to the wharves bordering Bear Creek.¹³²

C. The Court of Appeals of Maryland

The Defendants filed an order for an appeal on February 28, 1921 in the Court of Appeals of Maryland.¹³³ Mayor William F. Broening personally appeared before the court and submitted an oath that the appeal was not made for the purpose of delay. City Solicitor Marchant and Deputy City Solicitor Allen Davis filed the appeal on behalf of the Baltimore Mayor and City Council in the Court of Appeals on March 23, 1921.¹³⁴ The Court of Appeals affirmed the trial court on June 28, 1921, and remanded the case for further proceedings.¹³⁵ The

¹²⁸ *Id.* at 155.

¹²⁹ *Id.*

¹³⁰ SCHNEIDER, *supra* note 67, at 137. He died on May 11, 1946. *Id.*

¹³¹ Equity Docket, *supra* note 57, at 265.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Court of Appeals (Docket) April Term 1921 No. 62, Volume 1920/01-1927/10 page 63, MSA S412-18, 1/67/6/4 [hereinafter Court of Appeals Docket].

¹³⁵ Equity Docket, *supra* note 57, at 265.

appellate opinion was written by Chief Judge Andrew Hunter Boyd, and only one judge, Judge Stockbridge, dissented.¹³⁶

1. The Arguments.

The Brief for Appellants contained three principle arguments and a few additional secondary arguments. First, the Appellants argued that the lawsuit was transitory and neither of the Defendants resided in Baltimore County, and thus the trial court could not issue an injunction against them and did not have jurisdiction to hear the case.¹³⁷ Second, the Appellants argued that the allegations in the Complaint were insufficient to properly invoke an injunction from a court of equity.¹³⁸ They noted that the garbage that had been hauled to Bear Creek during the duration of the contract had not yielded a single reported injury or sickness.¹³⁹ The third principle argument that the Appellants presented in their brief was that the contract between the City and Mr. Huse was not illegal.¹⁴⁰ The Deputy City Solicitor's notes also revealed that he intended to argue that enjoining the City from exporting its garbage might endanger the health of the City residents, and would result in a much worse situation since more than half of the State's population lived in the City at the time.¹⁴¹

The Brief for the Appellees was much shorter in length than that of the Appellants.¹⁴² They argued that the allegations in the Complaint were complete and accurate, and that the City's contract with Mr. Huse was illegal because it violated Chapter 205 of the Acts of 1908

¹³⁶ Court of Appeals Docket, *supra* note 134.

¹³⁷ Court of Appeals (Records and Briefs) April Term 1921 No. 62, MSA S1733-578, 1/65/5/10, Appellants' Brief, at 2-10 [hereinafter Court of Appeals Records and Briefs].

¹³⁸ *Id.* The Brief stated, "[t]he allegations of fact in the bill, as distinguished from the mere apprehensions, surmises and prophecies contained therein, are not sufficient to invoke the restraining power of a court of equity." *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

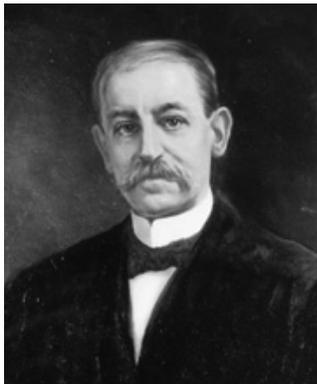
¹⁴² Court of Appeals Records and Briefs, *supra* note 137, Appellees' Brief, at 31.

prohibiting the removal of garbage to within nine miles of the Lazaretto Lighthouse.¹⁴³

Furthermore, the Brief continued, the City's contract was unreasonable and unnecessary.¹⁴⁴

2. *Judge Andrew Hunter Boyd.*

Chief Judge Andrew Hunter Boyd wrote the opinion for the Court of Appeals.¹⁴⁵ Chief Judge Boyd was born on July 15, 1849.¹⁴⁶ He graduated from the Washington and Lee School of Law in 1871, and was elected the State's Attorney for Allegheny County in November 1875.¹⁴⁷ He became Chief Judge of the Fourth Judicial Circuit and Associate Judge of the Court of Appeals of Maryland in 1896, and held the position of Chief Judge of the Court of Appeals of Maryland from 1907 to 1924.¹⁴⁸ In 1899 Judge Boyd attended the fourth annual meeting of the Maryland State Bar Association in Ocean City.¹⁴⁹ He was also part of a delegation sent down from the Maryland State Bar Association to participate in the founding meeting of the American Law Institute, held in Washington, D.C. in 1923.¹⁵⁰ Chief Judge Boyd died in 1925, at the age of 74.¹⁵¹



Chief Judge Andrew Hunter Boyd

Source: Maryland State Archives,
<http://www.mdarchives.state.md.us>

¹⁴³ *Id.* at 33.

¹⁴⁴ *Id.* at 39. The Appellees did not elaborate very much on this argument. *See id.*

¹⁴⁵ 139 Md. 210 (1921). By the time the case reached the appellate court the case had been renamed *Mayor & City Council of Baltimore v. Bd. of Health for Baltimore County*.

¹⁴⁶ BIOGRAPHICAL CYCLOPEDIA OF REPRESENTATIVE MEN OF MARYLAND AND THE DISTRICT OF COLUMBIA. 58 (1879)

¹⁴⁷ *Id.*

¹⁴⁸ SCHNEIDER, *supra* note 67, at 29-30.

¹⁴⁹ *Id.* at 65.

¹⁵⁰ *Id.* at 66-67.

¹⁵¹ *Id.* at 29.

3. *The Appellate Opinion.*

After describing the allegations made by both sides of the case, the Court of Appeals began its opinion by differentiating the issues presented in *Coghlan* from those decided in *Mayor & City Council of Baltimore v. Sackett*.¹⁵² In the *Sackett* case, the court explained, the private plaintiffs had filed a lawsuit seeking to enjoin the City from disposing of its garbage in Anne Arundel County.¹⁵³ In that case, however, the plaintiffs argued that either reducing the garbage in a reduction plant or using a piggery to dispose of it would inevitably lower property values around the area.¹⁵⁴ Thus, the court concluded that *Coghlan* was different because in *Coghlan* the plaintiffs were only alleging that the garbage removal would constitute a nuisance to the health of the surrounding residents, and were not raising any concerns related to property rights.¹⁵⁵ Nevertheless, the court noted that the jurisdiction principle of allowing the County court to hear the case was still in effect in the *Coghlan* situation because the alleged nuisance existed in Baltimore County, and it would be unfair to force a petitioner for an injunction to go to a remote part of the State to file for an injunction.¹⁵⁶

The Court of Appeals then addressed the issue of whether the Plaintiffs had the appropriate authority to sue the City on behalf of County residents.¹⁵⁷ It concluded that under Section 247 of the Health and Sanitation title of the Article 3 of the Code of Public General Laws, Baltimore County Commissioners constituted the local health board, and they had the power to preserve the health of the county and prevent nuisances.¹⁵⁸ Thus, the Baltimore County Board of Commissioners had standing.

¹⁵² *Mayor & City Council of Baltimore v. Bd. of Health for Baltimore Co.*, 139 Md. 210, 213-14 (1921).

¹⁵³ *Id.* at 213.

¹⁵⁴ *Id.* at 214.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 215.

¹⁵⁷ *Id.* at 214-15.

¹⁵⁸ *Id.*

The Court then concluded that the Defendants' demurrals were an insufficient response to the allegations that 11,520 tons of garbage were to be spread within a small radius of where 13,000 people live.¹⁵⁹ Due to its insufficiency, the Court wrote that the Defendants should at least be required to file an answer to the allegations of potential disease, sicknesses, and the contamination of springs and water supplies.¹⁶⁰ The Court suggested further that since the ninety days of the contract had already passed, the parties could present actual proof of what damage had been incurred by the spreading of the garbage in Bear Creek.¹⁶¹

The Court of Appeals next easily rejected the Appellees' argument that Chapter 205 of the Acts of 1908 prohibited the removal of garbage to Bear Creek because it was within nine miles of the Lazaretto Lighthouse.¹⁶² That provision, the court stated, was intended to apply to prevent the creation of any "garbage reduction plant" within nine miles of the lighthouse, and thus was inapplicable to *Coghlan*.¹⁶³

The final issue addressed in the appellate opinion was whether the Appellees' arguments regarding the potential for a nuisance were more than merely speculative.¹⁶⁴ The Court used prior case law to determine the standard. It cited to *Adams v. Michael*, for example, for the principle that a nuisance must be actual and not merely threatened.¹⁶⁵ However, it also noted that a party does not have to wait until injury is inflicted to apply for a writ of injunction.¹⁶⁶ Ultimately, the Court of Appeals decided that the Appellants should be mandated to file an

¹⁵⁹ *Id.* at 217.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 218.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 218-20.

¹⁶⁶ *Id.* at 219.

answer with the lower court explaining why the nuisance allegations were merely speculative and illegitimate.¹⁶⁷

D. Remand Decision

Before the case went back to trial in front of Judge Duncan in the Baltimore County Circuit Court, the City Board of Estimates held its monthly meeting on July 12, 1921, and established a committee to resolve the garbage situation.¹⁶⁸ At the meeting, it was clarified that the City's arrangement with Mr. Huse was that the City was paying Huse \$150 per scow load to send the garbage to his wharves.¹⁶⁹ Each scow load contained approximately 175 tons of garbage.¹⁷⁰ The Comptroller added that if the City were compelled by the lower court to bury the garbage at Graveyard Point, the property where the former piggery was located, then the procedures would cost the City \$1.50 per ton, and thus would be more expensive than the City's arrangement with Mr. Huse.¹⁷¹ Highways Engineer Mr. Christhilf recommended that the City continue to uphold its arrangement with Mr. Huse.¹⁷²

The Mayor and City Council of Baltimore filed a petition in the Circuit Court for Baltimore County on July 22, 1921 requesting that they be allowed to continue to dispose of the garbage on the territory bordering Bear Creek in Baltimore County until a new reduction plant could begin operation.¹⁷³ The City asserted that to justify an injunction against them, "there must be clear and positive evidence calling for such interposition of a court of equity, and the danger to the health of the people of the county must not merely be speculative but established

¹⁶⁷ *Id.* at 220.

¹⁶⁸ City Solicitor's Files, *supra* note 2, Letter from the Board of Estimates to Allen A. Davis, Esq., dated July 14, 1921, at 215.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Equity Papers, *supra* note 84, Petition of the Defendants.

with reasonable certainty.”¹⁷⁴ They argued that for several months the City had been sending its garbage to the land bordering Bear Creek and there had been no incidents of sickness.¹⁷⁵ Furthermore, they stated that the neighbors in the area were willing to have the garbage unloaded and piled near the wharves, and that the farmers in the area had engaged in this practice for years.¹⁷⁶ To support this argument, they attached five affidavits from residents of the Bear Creek area of varying ages all stating that they had not experienced any negative consequences of the temporary garbage removal system of Baltimore City.¹⁷⁷

Following the filing of the petition, the City Solicitor Roland Marchant also submitted an Answer to the Plaintiffs’ original Bill of Complaint on behalf of the Mayor and Baltimore City Council.¹⁷⁸ The Answer denied that the method of plowing the garbage under the soil was unsanitary if done properly, and denied that the garbage would be a source of disease or a menace to the health of people in that area.¹⁷⁹ The Defendants also denied that Graveyard Point in Anne Arundel County was an isolated property compared to the territory bordering Bear Creek near Mr. Huse’s wharves, and denied that the contract between the City and Mr. Huse was illegal.¹⁸⁰ In its Answer, the Defendants also offered justification for its actions, stating that the unforeseeable closing of the piggery had put the city officials in need of a temporary emergency plan, and that for the long term the Defendant had entered into a contract for the establishment of a garbage reduction plant.¹⁸¹ Unfortunately, however, the Defendants noted that the reduction

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Equity Papers, *supra* note 84, Answer, at 41.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

plant would not be ready for operation until January 1, 1922.¹⁸² Mr. Huse's Answer was a shortened version of the City's Answer.

The trial on remand began on July 27, 1921 and Judge Duncan quickly issued an opinion on August 3, 1921.¹⁸³ The trial provided an opportunity for witnesses to be called for both sides and for the Defendants to provide answers for the Plaintiffs' allegations.¹⁸⁴ Judge Duncan upheld the injunction, but compromised by setting its start date back to August 31, 1921.¹⁸⁵ The judge concluded that although garbage had been taken to the Bear Creek area for years, the City had failed to take into account the growing population in that area of Baltimore County and the increased number of individuals that would be uncomfortably affected by the severe odor of waste.¹⁸⁶ To reduce the odor, the court ordered Mr. Huse to remove the piles of garbage currently on the shores and spread land plaster on top of it after it was spread for fertilizer.¹⁸⁷ Judge Duncan concluded that the Plaintiffs had failed to prove that the garbage would pose an imminent health threat, but that they had shown that the garbage would create a nuisance.¹⁸⁸ Therefore, the injunction was held permanent and perpetual starting September 1, 1921, and the costs created by the lawsuit would be charged to the Defendants.¹⁸⁹

E. Aftermath.

On August 3, 1921, the Board of Estimates Committee that was established at the July meeting to handle the garbage removal problems reported its recommendations to the rest of the Board of Estimates.¹⁹⁰ The committee recommended that after August 31, 1921, the City

¹⁸² *Id.*

¹⁸³ Equity Papers, *supra* note 84, Remand Opinion, at 69.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ City Solicitor's Files, *supra* note 2, Committee Report to the Board of Estimates, at 81-83.

garbage be buried on the City's property at Graveyard Point.¹⁹¹ The Graveyard Point location was still equipped with an Austin unloading crane, a gasoline locomotive, and eight dump cars with about a half mile track, but the equipment was in need of repair.¹⁹² The Committee had determined that it would be necessary, in addition to repairing the existing equipment, to acquire a steam shovel and drive a well to operate it from the Graveyard Point site.¹⁹³ The estimated cost of burying the garbage at Graveyard Point was \$1.50 per ton.¹⁹⁴ Furthermore, the Committee recommended that Mr. Christhif, the Highways Engineer for Baltimore City, be authorized to make arrangements regarding the equipment, and that he be given the responsibilities of unloading the scows and burying the garbage.¹⁹⁵ The Committee's report was approved by the Board of Estimates on August 4, 1921.¹⁹⁶

The Committee's recommendations were carried out throughout the remainder of the year, and the City's garbage was sent to be buried at the City's Graveyard Point property until January of 1922 when a new reduction plant was opened.¹⁹⁷ The City entered into a contract with the Sanitary Reduction Company in the fall of 1921, and the privately-managed company took over the supervision of the disposal of the City's garbage beginning November 29, 1921.¹⁹⁸

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ City Solicitor's Files, *supra* note 2, Letter from Board of Estimates Department of Finance to Allen Davis dated August 4, 1921, at 87.

¹⁹⁷ City Solicitor's Files, *supra* note 2, Letter from Highways Engineer to City Solicitor Marchant January 3, 1922, at 123.

¹⁹⁸ *Id.*; *see also* City Solicitor's Files, *supra* note 2, Letter from Assistant City Solicitor to Ernest Hatch dated August 24, 1922, at 101-02.

II. Legal Ramifications

Coghlan v. Mayor & City Council of Baltimore was a classic example of a court decision that in theory accomplishes one thing but in practice accomplishes another. Legally, the case reinforced three principles: (1) local governments in Maryland will be held accountable for their decisions, even in emergency situations, when their decisions negatively impact a population of several thousand people; (2) when a nuisance is alleged and an injunction sought in a jurisdiction outside of a defendant's in personam jurisdiction, the petitioner will not be required to file in the defendant's in personam jurisdiction and can file in the jurisdiction where the nuisance is occurring; and (3) in order to establish that a nuisance exists the supporting evidence cannot be merely speculative or threatened but instead must be established with reasonable certainty.

Arguably, despite obtaining an injunction against Baltimore City, successfully bringing the Defendants to court in their own jurisdiction, and demonstrating that dumping the garbage in the Bear Creek area would create a nuisance for the surrounding residents and area visitors, the *Coghlan* Plaintiffs were not the winners of the lawsuit. Baltimore City was still able to haul its garbage in scow loads over to Mr. Huse's wharves while the appellate hearing was pending,¹⁹⁹ and ultimately even after the remand opinion was issued the City was permitted to continue carrying out its contract with Mr. Huse for another month.²⁰⁰ Thus, while the Maryland Court of Appeals emphasized that Baltimore City should be held accountable for the impact of their actions, it is obvious that the City used the delay of the appellate process to buy itself time to form and implement an alternative resolution for its garbage removal system.

¹⁹⁹ See *supra* notes 174 and accompanying text.

²⁰⁰ See *supra* notes 220-224 and accompanying text.

III. Assessing the Court's Options

The *Coghlan* case turned on whether Baltimore City had imposed a nuisance on the residents of Bear Creek by temporarily dumping the City's garbage on Mr. Huse's property. The City officials decided to export the City garbage to another jurisdiction. The export would result in pollution in Baltimore County, but the estimated effects on the health and safety of nearby residents was unclear. The City officials, watching garbage accumulate and rot in their streets, felt there was no other immediately effective alternative but to ship the garbage to Mr. Huse's property.

To establish a nuisance, a plaintiff must "show that defendant's conduct in carrying on the activity at the place and at the time the injunction is sought is unreasonable."²⁰¹ Conduct is held to be unreasonable "only if the gravity of the harm caused outweighs the utility of the conduct."²⁰² Despite the lack of statistics or precise medical data regarding the health consequences of the pollution, the trial court held that a nuisance did exist, and granted an injunction. The Court of Appeals wanted the City to at least file an Answer refuting that a nuisance would arise.

I believe that if the Maryland courts today were to re-try the *Coghlan* case, especially in light of the *Boomer v. Atlantic Cement Co.* decision, the nuisance issue would be a tougher question. In 1921, the courts that tried *Coghlan* assessed whether the arguments of the plaintiffs were merely speculative and not actually threatened.²⁰³ The plaintiffs vaguely argued that the level of harm caused to the health of the residents would meet the nuisance standard, but chose not to argue that the garbage spreading would reduce the value of properties in the

²⁰¹ PROSSER AND KEETON ON THE LAW OF TORTS 631 (5th ed., 1984) [hereinafter PROSSER & KEETON]; *see also* *Boomer v. Atlantic Cement Co.*, 257 N.E.2d 870 (1970).

²⁰² PROSSER & KEETON, *supra* note 201, at 630.

²⁰³ *See supra* notes 164 – 167 and accompanying text.

neighborhood.²⁰⁴ On remand, the defendants noted that not a single illness or sickness had been reported during the first several months of the City's implementation of the garbage removal contract with Mr. Huse. Without more concrete evidence of negative health consequences, the degree of harm caused by the spreading of the garbage weighed against the utility of exporting it from the streets of the City seems likely to be less. Indeed, from the perspective of the City officials and residents it seems probable that removing the decaying garbage from the City streets to a farm in Baltimore County would result in more positive consequences than negative ones. Thus, had the trial judge in 1921 recognized and acknowledged the weaknesses in the plaintiffs' arguments, it could have easily held that the threatened harm was merely speculative and therefore did not effectively establish that the implementation of the City's temporary garbage removal process would rise to the standard of nuisance.

Nevertheless, the trial and appellate courts both held that the City was liable for nuisance. Once a nuisance is established, there are three basic remedies that a plaintiff may seek. These include damages, equitable relief, and self-help abatement of the nuisance. The plaintiffs in the *Coghlan* case, the County Board of Commissioners, sought only injunctive relief for the residents of Bear Creek and the surrounding neighborhoods.²⁰⁵ From an economic perspective, awarding damages to all of the residents in the areas near Mr. Huse's farm would be enormously burdensome for the City. Any cost-benefit analysis would depend on the duration of the exportation of City garbage to Mr. Huse's farmland, the value of any damage incurred to the nearby residents, and the value of the benefit of the garbage removal system to the City

²⁰⁴ One reason for this might be that the plaintiffs were not a class of individual residents living near Mr. Huse's farm, but rather were the County Commissioners suing on behalf of those residents. Had individual residents been the named plaintiffs, it seems likely that they would have argued more strongly against property value damage caused by the import of the City garbage.

²⁰⁵ Self-help abatement of this nuisance clearly was not the best option for the plaintiffs given the authority of the defendants and the low likelihood that the City would cease merely as a result of complaints filed by the County.

residents. In any situation where there is imperfect information as to the health and safety effects of a municipality's conduct, injunctive relief seems to be the preferable remedy for both the plaintiffs and defendants. Enjoining the conduct results in relief for the plaintiffs which they may have been denied altogether had the negative consequences of the conduct ultimately not risen to significant harm, and also eliminates any chance of the defendants having to bear the financial burden of compensating entire neighborhoods. In the *Coghlan* case, the City also had financial incentive to terminate its temporary arrangement with Mr. Huse and create a more permanent, self-sufficient garbage reduction plant. Thus, injunctive relief likely was the courts' best option in the *Coghlan* case, and would probably be the best option in any case where the data provided concerning the health consequences of the conduct was unclear.

Conclusion

Coghlan v. Mayor & City Council of Baltimore is an interesting case study in how legal principles can often dictate a structure in theory that is completely opposite of how it works in practice. Despite the case's questionable legal importance, however, the case brings to light a very interesting dilemma that municipalities have struggled to handle throughout history: the development of a garbage disposal system that accommodates hundreds of thousands of residents but does not impose unnecessary discomfort on residents in another area. The case was also interesting to investigate because it demonstrated how city officials are often pressured to make quick decisions in response to unforeseeable events, and how, despite the time constraints, they will be held accountable for whatever negative consequences those decisions cause.

Since 1921, Baltimore City has obviously learned the importance of future planning with respect to a waste management plan, and has instituted a highly-monitored, regulation-compliant system that is overseen by the Department of Public Works.²⁰⁶ The current system is a mix of both private and public management, and involves waste acceptance facilities equipped with massive incinerators, as well as a landfill that is constantly inspected by aerial photographers to assess its lifespan.²⁰⁷

²⁰⁶ See City of Baltimore Department of Public Works: Bureau of Solid Waste. *Ten Year Solid Waste Management Plan*, July 2002, available at <http://www.ci.baltimore.md.us/government/dpw/SW10yrPlan/SW10yrMgmtPlan5.pdf> (describing in detail the current garbage removal system used in Baltimore City).

²⁰⁷ *Id.*